

Order No. 143

File No. 03-0002-02

METIS SETTLEMENTS ACT

METIS SETTLEMENTS APPEAL TRIBUNAL

Between:

Joseph Ramsey Carifelle

Appellant

-and-

Peavine Metis Settlement

Respondent

Concerning a Land Dispute Involving the NW-23-079-16-W5M.

DECISION

Table of Contents

THE HEARING..... 3

BACKGROUND 4

JURISDICTION 5

EVIDENCE 5

APPELLANT’S EVIDENCE 5

RESPONDENT’S EVIDENCE 5

FINDINGS OF FACT 6

DECISION 7

REASONS..... 8

ORDER 8

The Hearing

Appeal heard by the following members of the Metis Settlements Appeal Tribunal:

Phyllis Collins, Panel Chair
Floyd Flett, Panel Member
Wayne Cardinal, Panel Member

Parties present at the hearing:

Joseph Ramsey Carifelle, Appellant

Peavine Metis Settlement Council, Respondent

Represented by: Iner Gauchier, Chairperson
Arnold Gauchier, Vice-Chairperson
Raymond Carifelle, Councillor
Dennis Cunningham, Previous Administrator
Don Cunningham, Land & Membership Coordinator

MSAT staff present:

Terri Quintal, Research and Development Officer

Place and date of the Hearing:

Room 302, High Prairie Inn
High Prairie, Alberta
July 16, 2002

Objections to the Panel:

The Panel Chair asked if there were any objections to the composition of the panel; there were none.

Background

On April 6, 1989, Joseph Carifelle was granted an allocation on land legally described as the NW-23-079-16-W5M on the Peavine Metis Settlement. On May 3, 1996, Joseph submitted an application to convert an allocation. Peavine Council approved Joseph's application on May 7, 1996 through motion 96:05:07:08. The motion stated that the provisional Metis title term would end in 2000, a 4-year term.

As a result, Joseph's provisional Metis title was only recorded, not registered, with the Metis Settlements Land Registry. The Metis Settlements Land Registry inquired about the 4-year term, but received no response from Peavine.. The Peavine Metis Settlement did not respond to the Metis Settlements Land Registry's inquiries. Had the interest been registered for 5 years, it would have expired on May 7, 2001.

Joseph did not receive notice from the Metis Settlements Land Registry that his provisional Metis title was going to expire because the Metis Settlements Land Registry had the title as recorded, not registered. Joseph received oil and gas compensation from December 13, 1998 to November 20, 2000. Joseph informed the Tribunal that he was waiting for his compensation cheque and when it did not come he went to the Settlement Office and discovered the uncertain status of his interest.

In his appeal letter to the Tribunal, Joseph asked that his land be given back to him because he did not receive notice that it was being taken away.

Joseph did not apply for Metis title or a revision of his provisional Metis title.

Joseph's appeal period, according to the dates on the memorandum of provisional Metis title, ended on October 13, 2000. If the interest had been five years, his appeal period would have ended on July 21, 2001. On April 19, 2002, a Case Management Panel of the Tribunal met and decided to waive the time period for Mr. Carifelle's appeal. Mr. Carifelle's appeal period was extended because he did not receive notice of the expiration of his provisional Metis title.

Metis Settlements Act

202 When a matter before the Appeal Tribunal is, by this Act or any other enactment or by any rule or decision of the Tribunal, required to be done within a specified time and if the circumstances of the case in its opinion so require, the Tribunal may, with or without notice, extend the time so specified or waive the requirement whether or not the time has expired.

Jurisdiction

The Tribunal has jurisdiction to hear this appeal according to section 189(1)(b) of the *Metis Settlements Act*, which states:

189(1) The Appeal Tribunal

...

- (b) Must hear appeals and references and perform any other function given to it or required to be performed by it under the regulations, bylaws, or General Council Policies...

The General Council Land Policy states:

8.2 References

Any question or dispute as to the ownership or extent of an interest in land in a Settlement area may be referred to the Appeal Tribunal for an advance ruling or for a decision.

Evidence

Appellant's Evidence

Joseph Carifelle made the following points:

- I did not receive written notice that the land was going to expire.
- I did not receive any information from the Metis Settlements Land Registry.
- I can't remember who I spoke with at the Settlement but they said that my land had been taken away.
- I am living at my dad's [in Peavine].
- My work takes me off the Settlement; I get home once a month.
- This is not about compensation; I just want a place to fall back to.
- I cleared some land, where an oil lease is now.
- I wanted to put a house on the land.
- I applied for a house about two or three years ago.
- I put in two or three applications for a house. I did not build a house because I don't have the money.

Respondent's Evidence

Peavine Metis Settlement made the following points

Iner Gauchier, Chairperson

- Joe does not reside in his dad's house.

Arnold Gauchier, Vice-Chairperson

- No housing applications from Joe were brought to my attention.

Dennis Cunningham, Former Administrator

- We are not taking the land away; we are following the *Act*.
- It is up to the individual to apply [for an upgrade or renewal].
- We posted land for 14 days.
- Some people get letters from the Metis Settlements Land Registry about their land. You [Joseph Carifelle] did not because it was only recorded.
- You [Joseph Carifelle] signed the provisional Metis title with the term starting May 7, 1996 and ending June 30, 2000.

Don Cunningham, Land and Membership Coordinator

- It appears that he was granted a four-year provisional Metis title to accommodate Council Motion 96:05:07:08.
- The application to convert an Allocation was submitted to the Peavine Metis Settlement Council approximately 10 months after the deadline of June 30th, 1995 as per the *Land Interests Conversion Regulation* under the *Metis Settlements Act*.
- He does not have a leave of absence.
- I am not sure why Joe thinks that his land was taken away; the provisional Metis title expired.
- If the land expires it is up to the individual to come in and apply.
- The Council that granted Joey the provisional Metis title did their math wrong, which resulted in a 4-year title.
- In all fairness to Joe, the dates were not correct but he signed the provisional Metis title.

Findings of Fact

- Joseph Carifelle applied for and received land legally described as NW-23-079-16-W5M under the *Metis Betterment Act*, on April 6, 1989.
- On May 3, 1996, Joseph Carifelle submitted an Application to Convert an Allocation, for the NW-23-079-16-W5M.
- On May 7, 1996, Peavine Council approved Joseph Carifelle's Land Conversion application through Council motion 96:05:07:08 which states

Kenny moved to accept Joseph R. Carifelle's application to convert an allocation to a Provisional Metis Title land description NW-23-79-16-5 inclusive of specified terms and conditions described on the application ending in the year 2000.

- Joseph Carifelle's Memorandum of Provisional Metis Title states the following terms:

1. Possession

- (1) You have the exclusive right to use and occupy the land for 5 years, starting May 7, 1996 and ending June 30, 2000 as long as you are making the improvements needed to get Metis title and are using the land for the purpose of farming.

- There was a conflict between the dates written in and the length of the term stated in the memorandum of provisional Metis title.

- On May 9, 1996 the Metis Settlements Land Registry informed the Peavine Metis Settlement that the provisional Metis title granted to Joseph Carifelle should have an expiry date in 2001.
- Section 2.5 (5) of the Metis Settlements General Council Land Policy states:
 - A Memorandum of Provisional Metis Title must be in the format attached to this Policy.
- Section 1(1) of the Memorandum of Provisional Metis Title states:
 - (1) You have the exclusive right to use and occupy the land for 5 years...
- Section 5 (1) of the Memorandum of Provisional Metis Title states:
 - 5. Returning the land
 - (1) Within 60 days of the end of this grant, unless you are waiting on a decision on an application for Metis title to this land, you must return the land to the settlement in no worse condition that you received it.
- The Metis Settlements Land Registry recorded, rather than registered, Joseph Carifelle's provisional Metis title because the expiry date was incorrect.
- The Metis Settlements Land Registry did not notify Joseph Carifelle of the pending expiry date because the interest was only recorded.
- Section 6(1) of the Memorandum of Provisional Metis Title states:
 - 6 Obtaining Title
 - (2) While this grant is in effect you can claim the Metis title to the land if
 - (a) You have made the improvements required by by-law;
 - (b) You meet the land holding conditions set by by-law;
 - (c) You have paid all the user fees, levies, and other charges on the land or required for the issuing of Metis title; and
 - (d) You can be registered as the holder of the Metis title.
- Section (1)(2) of the Memorandum of Provisional Metis Title states:
 - 1. Possession
 - ...
 - (3) If you have not received Metis title to the land at the end of the first 5 year term, but in the settlement's opinion you are productively using the land and have made satisfactory progress on improvements, you can renew this grant for one more 5 year term.
- Joseph Carifelle did not submit an application to renew or upgrade the provisional Metis title.

Decision

- The Peavine Metis Settlement Council erred when they set the expiry for the provisional Metis title at 2000 rather than 2001.
- Peavine Metis Settlement owes Joseph Carifelle any compensation incurred between May 7, 1996 and May 7, 2001.

- Joseph Carifelle does not qualify for an extension or an upgrade of the interest on the NW-23-079-16-W5M.
- The land legally described as the NW-23-079-16-W5M is returned to the Peavine Metis Settlement as of May 7, 2001.

Reasons

- A provisional Metis title is an interest with a 5-year term. While the main body of the General Council Land Policy does not specify that a provisional Metis title must be granted for 5 years, the form for a Memorandum of Provisional Metis Title that is attached to the Land Policy indicates that a provisional Metis title is granted for a 5-year term; there is not a blank space that allows for a different term to be given.
- If the Peavine Metis Settlement Council had granted the provisional Metis title for 5 years, the interest would have expired on May 7, 2001 and Joseph Carifelle would have been paid compensation for that year.
- Joseph Carifelle did not submit an application to either renew or upgrade his provisional Metis title, as a result he does not qualify for an upgrade or a renewal.

Order

The Tribunal orders that:

- The Registrar of the Metis Settlement Land Registry register Joseph Carifelle's interest in the NW-23-079-16-W5M with an expiry date of May 7, 2001.
- The Registrar of the Metis Settlements Land Registry cancel Joseph Carifelle's interest as of May 7, 2001.
- The Peavine Metis Settlement pay Joseph Carifelle any compensation owed to him for the NW-23-079-16-W5M for the term of the provisional Metis title.
- The Peavine Metis Settlement provide the Tribunal with either proof of payment or proof that no compensation is owed to Joseph Carifelle by September 13, 2002.

Dated in the City of Edmonton in the Province of Alberta on the 13th day of August 2002.

Phyllis Collins
Panel Chair